

105TH CONGRESS
2D SESSION

S. 2503

To establish a Presidential Commission to determine the validity of certain land claims arising out of the Treaty of Guadalupe-Hidalgo of 1848 involving the descendants of persons who were Mexican citizens at the time of the Treaty.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 1998

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a Presidential Commission to determine the validity of certain land claims arising out of the Treaty of Guadalupe-Hidalgo of 1848 involving the descendants of persons who were Mexican citizens at the time of the Treaty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE: TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Guadalupe-Hidalgo Treaty Land Claims Equity Act of
6 1998”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title: table of contents.
- Sec. 2. Definitions and findings.
- Sec. 3. Establishment and membership of Commission.
- Sec. 4. International Document Procurement Agreement.
- Sec. 5. Development of the Code of Land Grant Claims Procedure.
- Sec. 6. Examination of land claims.
- Sec. 7. Community Land Grant Study Center.
- Sec. 8. Miscellaneous powers of Commission.
- Sec. 9. Report.
- Sec. 10. Termination.
- Sec. 11. Authorization of appropriations.

3 **SEC. 2. DEFINITIONS AND FINDINGS.**

4 (a) DEFINITIONS.—For purpose of this Act:

5 (1) COMMISSION.—The term “Commission”
 6 means the Guadalupe-Hidalgo Treaty Land Claims
 7 Commission established under section 3.

8 (2) TREATY OF GUADALUPE-HIDALGO.—The
 9 term “Treaty of Guadalupe-Hidalgo” means the
 10 treaty of Peace, Friendship, Limits, and Settlement
 11 (Treaty of Guadalupe Hidalgo), between the United
 12 States and the Republic of Mexico, signed February
 13 2, 1848 (TS 207: 9 Bevans 791).

14 (3) ELIGIBLE DESCENDANT.—The term “eligi-
 15 ble descendant” means a descendant of a person
 16 who—

17 (A) was a Mexican citizen before the Trea-
 18 ty of Guadalupe Hidalgo;

19 (B) was a member of a community land
 20 grant; and

1 (C) became a United States citizen within
2 ten years after the effective date of the Treaty
3 of Guadalupe-Hidalgo, May 30, 1848, pursuant
4 to the terms of the Treaty.

5 (4) COMMUNITY LAND GRANT.—The term
6 “community land grant” means a village, town, set-
7 tlement, or pueblo consisting of land held in common
8 (accompanied by lesser private allotments) by three
9 or more families under a grant from the King of
10 Spain (or his representative) before the effective
11 date of the Treaty of Cordova, August 24, 1821, or
12 from the authorities of the Republic of Mexico before
13 May 30, 1848, in what became the State of New
14 Mexico, regardless of the original character of the
15 grant.

16 (5) RECONSTITUTED.—The term “reconsti-
17 tuted”, with regard to a valid community land grant,
18 means restoration to full status as a municipality
19 with rights properly belonging to a municipality
20 under State law and the right of local self-govern-
21 ment.

22 (b) FINDINGS.—Congress finds the following:

23 (1) New Mexico has a unique history regarding
24 the acquisition of ownership of land as a result of
25 the substantial number of Spanish and Mexican land

1 grants that were an integral part of the colonization
 2 and growth of New Mexico before the United States
 3 acquired the area in the Treaty of Guadalupe-Hi-
 4 dalgo.

5 (2) Various provisions of the Treaty of Guada-
 6 lupe-Hidalgo have not yet been fully implemented in
 7 the spirit of article VI, section 2, of the Constitution
 8 of the United States.

9 (3) Serious questions regarding the prior own-
 10 ership of lands in the State of New Mexico, particu-
 11 larly certain public lands, still exist.

12 (4) Congressionally established land claim com-
 13 missions have been used in the past to successfully
 14 examine disputed land possession questions.

15 **SEC. 3. ESTABLISHMENT AND MEMBERSHIP OF COMMIS-**
 16 **SION.**

17 (a) **ESTABLISHMENT.**—There is established a com-
 18 mission to be known as the “Guadalupe-Hidalgo Treaty
 19 Land Claims Commission”.

20 (b) **NUMBER AND APPOINTMENT OF MEMBERS.**—
 21 The Commission shall be composed of five members ap-
 22 pointed by the President, by and with the advice and con-
 23 sent of the Senate. At least two of the members of the
 24 Commission shall be selected from among persons who are
 25 eligible descendants. All members shall demonstrate

1 knowledge and expertise about the history and law associ-
 2 ated with the New Mexico land grants.

3 (c) TERMS.—Each member shall be appointed for the
 4 life of the Commission. A vacancy in the Commission shall
 5 be filled in the manner in which the original appointment
 6 was made.

7 (d) COMPENSATION.—Members shall each be entitled
 8 to receive the daily equivalent of level V of the Executive
 9 Schedule for each day (including travel time) during which
 10 they are engaged in the actual performance of duties vest-
 11 ed in the Commission.

12 **SEC. 4. INTERNATIONAL AGREEMENTS FOR COOPERA-**
 13 **TION IN THE PROCUREMENT OF RELEVANT**
 14 **DOCUMENTS.**

15 (a) FINDINGS.—Congress recognizes that—

16 (1) the availability of documents concerning
 17 community land grants in the State of New Mexico
 18 in the United States is limited; and

19 (2) a fair and equitable evaluation of the com-
 20 munity land grants will depend upon obtaining a
 21 comprehensive compilation of the relevant documents
 22 available.

23 (b) BILATERAL AGREEMENTS.—The Secretary of
 24 State is authorized to negotiate bilateral agreements with
 25 the Governments of Mexico and Spain to obtain their full

1 cooperation with the Commission so that the Commission
 2 will have access to certified copies of all relevant docu-
 3 ments in those countries relating to community land
 4 grants in the State of New Mexico.

5 **SEC. 5. DEVELOPMENT OF CODE OF LAND GRANT CLAIMS**
 6 **PROCEDURES.**

7 (a) DEVELOPMENT OF PROCEDURES.—Not later
 8 than one year after the date on which the second bilateral
 9 agreement described in section 4 is concluded, the Com-
 10 mission shall develop workable and equitable procedures,
 11 in clear and concise form, for land grant evaluations, in-
 12 cluding but not limited to—

13 (1) a criteria for the Commission to use during
 14 its evaluation of what constituted a legal community
 15 land grant under Mexican and Spanish law;

16 (2) the scope of admissible evidence;

17 (3) appropriate presumptions, if any, regarding
 18 previous adjudications made by the Surveyor Gen-
 19 eral and the Court of Private Land Claims, and
 20 other court decisions involving the Treaty;

21 (4) a set of procedural rules setting forth the
 22 burden of proof that the Commission will use in de-
 23 termining the validity of community land grants;

1 (5) an outline of investigative services the Com-
2 mission proposes to make available to land grant
3 claimants;

4 (6) safeguards, acceptable to title insurance
5 companies, to ensure that private property owners
6 will not be affected, either with the threat of losing
7 possession to their property or any impairment to
8 the legal, equitable or clear title to their property by
9 the work of the Commission;

10 (7) safeguards, acceptable to the New Mexico
11 State Engineer, that clearly protect and do not in
12 any way affect the water rights of any person or en-
13 tity;

14 (8) safeguards, acceptable to the various Native
15 American Tribes and Pueblos, that clearly protect
16 the status quo regarding existing Indian Lands;

17 (9) procedures, acceptable to the various Native
18 American Tribes and Pueblos, that—

19 (A) provide them with access to sacred
20 sites that may eventually be adjudicated as
21 community land grants, and that may become
22 part of any reconstituted community land
23 grant; and

24 (B) require that any such sites be identi-
25 fied by the various Native American Tribes and

1 Pueblos during the development of the Code of
2 Land Grant Claims Procedures for the Com-
3 mission;

4 (10) an outline of the rights and responsibilities
5 of community land grantees if a community land
6 grant is reconstituted; and

7 (11) any other items the Commission deems ap-
8 propriate and necessary.

9 (b) REVIEW BY CONGRESSIONAL ENERGY COMMIT-
10 TEES.—Prior to beginning the examination of specific
11 community land claims, the Commission shall submit the
12 Code of Land Claims Procedure to the Committee on En-
13 ergy and Natural Resources of the Senate and the Com-
14 mittee on Resources of the House of Representatives. The
15 Committees shall have ninety days to hold hearings and
16 examine the Code. The Commission may not commence
17 evaluations of specific community land claims earlier than
18 the 90 days after the date of submission of the Code under
19 this subsection.

20 **SEC. 6. EXAMINATION OF LAND CLAIMS LOCATED IN NEW**
21 **MEXICO.**

22 (a) SUBMISSION OF NEW MEXICO LAND CLAIMS PE-
23 TITIONS.—Any three (or more) eligible descendants who
24 are also descendants of the same community land grant
25 may file with the Commission a petition on behalf of them-

1 selves and all other descendants of that community land
2 grant seeking a determination of the validity of the land
3 claim that is the basis for the petition.

4 (b) DEADLINE FOR SUBMISSION.—To be considered
5 by the Commission a petition under subsection (a) must
6 be received by the Commission not later than five years
7 after the date on which the Committee on Energy and
8 Natural Resources and the Committee on Resources of the
9 House of Representatives has completed the 90-day review
10 period.

11 (c) ELEMENTS OF PETITION.—A petition under sub-
12 section (a) shall be made under oath and shall contain
13 the following:

14 (1) The names and addresses of the eligible de-
15 scendants who are petitioners.

16 (2) The fact that the land involved in the peti-
17 tion was a community land grant at the time of the
18 effective date of the Guadalupe-Hidalgo Treaty and
19 that such land is now within the borders of the State
20 of New Mexico.

21 (3) The extent of the community land grant, to
22 the best of the knowledge of the petitioners, accom-
23 panied with a survey or, if a survey is not feasible
24 for them, a sketch map thereof.

1 (4) The fact that the petitioners reside, or in-
2 tend to settle upon, the community land grant.

3 (5) All facts known to petitioners concerning
4 the community land grant, together with copies of
5 all papers in regard thereto available to petitioners.

6 (d) PETITION HEARING.—At one or more designated
7 locations in the State of New Mexico, the Commission
8 shall hold a hearing upon each petition timely submitted
9 under this section, at which hearing all persons having an
10 interest in the land involved in the petition shall have the
11 right, upon notice, to appear as a party.

12 (e) SUBPOENA POWER.—

13 (1) IN GENERAL.—The Commission may issue
14 subpoenas requiring the attendance and testimony of
15 witnesses and the production of any evidence relat-
16 ing to any petition submitted under subsection (a).
17 The attendance of witnesses and the production of
18 evidence may be required from any place within the
19 United States at any designated place of hearing
20 within the State of New Mexico.

21 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
22 son refuses to obey a subpoena issued under para-
23 graph (1), the Commission may apply to a United
24 States district court for an order requiring that per-
25 son to appear before the Commission to give testi-

1 mony, produce evidence, or both, relating to the
2 matter under investigation. The application may be
3 made within the judicial district where the hearing
4 is conducted or where that person is found, resides,
5 or transacts business. Any failure to obey the order
6 of the court may be punished by the court as civil
7 contempt.

8 (3) SERVICE OF SUBPOENAS.—The subpoenas
9 of the Commission shall be served in the manner
10 provided for subpoenas issued by a United States
11 district court under the Federal Rules of Civil Pro-
12 cedure for the United States district courts.

13 (4) SERVICE OF PROCESS.—All process of any
14 court to which application is to be made under para-
15 graph (2) may be served in the judicial district in
16 which the person required to be served resides or
17 may be found.

18 (f) DECISION.—On the basis of the facts contained
19 in a petition submitted under subsection (a), and the hear-
20 ing held with regard to the petition, the commission shall
21 determine, consistent with the Code of Land Claims Pro-
22 cedure, the validity of the community land grant described
23 in the petition. The decision shall include a recommenda-
24 tion of the Commission regarding whether the community
25 land grant should be reconstituted and its lands restored.

1 (g) PROTECTION OF NON-FEDERAL PROPERTY.—

2 The decision of the Commission regarding the validity of
 3 a petition submitted under subsection (a) shall not affect
 4 the ownership, title or rights of owners of any non-Federal
 5 lands covered by the petition. Any recommendation of the
 6 Commission under subsection (f) regarding whether a
 7 community land grant should be reconstituted and its
 8 lands restored may not address, affect or otherwise involve
 9 non-Federal lands. In the case of a valid petition covering
 10 lands held in non-Federal ownership, the Commission
 11 shall modify the recommendation under the subsection (f)
 12 to recommend the substitution of comparable Federal
 13 lands in the State of New Mexico for the lands held in
 14 non-Federal ownership.

15 **SEC. 7. COMMUNITY LAND GRANT STUDY CENTER.**

16 To assist the Commission in the performance of its
 17 activities under section 4, the commission shall establish
 18 a Community Land Grant Study Center at the Onate Cen-
 19 ter in Alcalde, New Mexico. The Commission shall be
 20 charged with the responsibility of directing the research,
 21 study, and investigations necessary for the Commission to
 22 perform its duties under this Act.

23 **SEC. 8. MISCELLANEOUS POWERS OF COMMISSION.**

24 (a) HEARINGS AND SESSIONS.—The Commission
 25 may, for the purpose of carrying out this Act, hold hear-

1 ings, sit and act at times and places, take testimony, and
2 receive evidence as the Commission considers appropriate,
3 the Commission may administer oaths or affirmations to
4 witnesses appearing before it.

5 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
6 ber or agent of the Commission may, if authorized by the
7 Commission, take any action which the Commission is au-
8 thorized to take by this section.

9 (c) GIFTS, BEQUESTS, AND DEVISES.—The Commis-
10 sion may accept, use, and dispose of gifts, bequests, or
11 devises of services or property, both real and personal, for
12 the purpose of aiding or facilitating the work of the Com-
13 mission so long as it is determined that the acceptance
14 of such gifts, bequests or devises do not constitute a con-
15 flict of interest.

16 (d) MAILS.—The Commission may use the United
17 States mails in the same manner and under the same con-
18 ditions as the other departments and agencies of the
19 United States.

20 (e) ADMINISTRATIVE SUPPORT SERVICES.—Upon
21 the request of the Commission the Administrator of Gen-
22 eral Services shall provide to the Commission, on a reim-
23 bursable basis, the administrative support services nec-
24 essary for the Commission to carry out its responsibilities
25 under this Act.

1 (f) IMMUNITY.—The Commission is an agency of the
2 United States for the purpose of part V of title 18, United
3 States Code (relating to immunity of witnesses).

4 **SEC. 9. REPORT.**

5 As soon as practicable after reaching its last decision
6 under section 6, the Commission shall submit to the Presi-
7 dent and the Congress a report containing each decision,
8 including the recommendation of the Commission regard-
9 ing whether certain community land grants should be re-
10 constituted, so that the Congress may act upon the rec-
11 ommendations.

12 **SEC. 10. TERMINATION.**

13 The Commission shall terminate on 180 days after
14 submitting its final report under section 9.

15 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

16 There is authorized to be appropriated \$1,000,000
17 for each of the fiscal years 1999 through 2007 for the
18 purpose of carrying out the activities of the Commission
19 and to establish and operate the Community Land Grant
20 Study Center under section 7.

